National Coal, Inc. *and* United Mine Workers of America. Case 9–CA–29720

November 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by United Mine Workers of America (the Union), the General Counsel of the National Labor Relations Board issued a complaint against National Coal, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 16, 1992, the General Counsel filed a Motion for Summary Judgment. On October 19, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the attorney for the General Counsel, by letter dated October 8, 1992, notified the Respondent that unless an answer was received by October 14, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the operation of a coal mine at Holden, West Virginia. During the 12-month period ending August 3, 1992, the Respondent sold and shipped from its facility in Holden, West Virginia, goods valued in excess of $50,000 directly to Island Creek Coal Company, an enterprise located within the State of West Virginia, which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> The employees of the Respondent described in the National Bituminous Coal Wage Agreement of 1988.

Since about January 1991 and at all times material, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (National Bituminous Coal Wage Agreement of 1988) effective through February 1, 1993.

At all times material since January 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about June 19, 1992, and thereafter, the Respondent has refused to comply with the terms of the collective-bargaining agreement as it relates to the assignment of work, by failing to assign certain coal removal work to classified unit employees.

CONCLUSION OF LAW

By refusing to comply with the terms of the collective-bargaining agreement as it relates to the assignment of work, by failing to assign certain coal removal work to unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) and Section 8(d), we shall order the Respondent to make their unit employees whole for any and all losses and expenses resulting from its failure to assign certain coal removal work to unit employees, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, National Coal, Inc., Holden, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to comply with the terms of the collective-bargaining agreement as it relates to the assignment of work, by failing to assign coal removal work to employees in the following appropriate unit:

> The employees of the Respondent described in the National Bituminous Coal Wage Agreement of 1988.

(b) Refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the collective-bargaining agreement with respect to the assignment of work, specifically the assignment of coal removal work to unit employees.

(b) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to terms and conditions of employment.

(c) Make the unit employees whole for any and all losses and expenses suffered as a result of the failure to assign certain coal removal work to unit employees as set forth in the remedy section of the decision.

(d) Post at its facility in Holden, West Virginia, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to comply with the terms of the collective-bargaining agreement as it relates to the assignment of work, by failing to assign coal removal work to the employees in the following appropriate unit:

> The employees of the Respondent described in the National Bituminous Coal Wage Agreement of 1988.

WE WILL NOT refuse to bargain with United Mine Workers of America as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the collective-bargaining agreement with respect to the assignment of work, specifically the assignment of coal removal work to unit employees.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees regarding terms and conditions of employment.

WE WILL make our unit employees whole for losses and expenses suffered as a result of our failure to assign certain coal removal work to unit employees, plus interest.

NATIONAL COAL, INC.